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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN FRANCISCO (FRESNO), CA

Date: **JAN 24 2005**

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on January 9, 1988. The applicant's mother, Adrian Lourido, was born in Colombia, and she became a naturalized United States (U.S.) citizen on September 17, 2001, when the applicant was thirteen years old. The applicant's father, [REDACTED] was born in Colombia. He is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant was admitted into the United States as a lawful permanent resident on September 17, 1994, when he was six years old. He presently seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded the applicant had failed to establish that he resided in the U.S. in the physical custody of his U.S. citizen parent, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant, through his mother, asserts that he has resided in Colombia since he turned fourteen years old because his U.S. lawful permanent resident status expired.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was thirteen years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The record reflects that the applicant was admitted into the United States in 1994, and that the applicant's mother became a naturalized U.S. citizen in 2001. Both events occurred prior to the applicant's eighteenth birthday. The applicant therefore meets the requirements set forth in subsections (a)(1) and (a)(2) of section 320 of the Act.

Legal and physical custody requirements set forth in section 320 of the Act are assessed as of February 27, 2001, the date that the amendments made by the CCA legally came into effect. *See Matter of Jesus Enrique Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001). The record reflects that the applicant was born out of wedlock, and that both of his parents share legal custody over the applicant. *See generally, Matter of Rivers*, 17 I&N Dec. 419 (BIA 1980). Nevertheless, the AAO finds that the evidence in the record fails to establish that the applicant resided in the United States in the physical custody of his U.S. citizen mother pursuant to a lawful admission for permanent residence, on September 17, 2001, or thereafter, as required by section 320 of the Act. The applicant thus failed to establish that he meets the requirements for citizenship as set forth in section 320(a)(3) of the Act.

The AAO notes that the applicant has also failed to establish that he qualifies for citizenship under section 322 of the Act; 8 U.S.C. § 1433. Section 322 of the Act applies to children born and residing outside of the United States and states, in pertinent part, that:

(a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary, Homeland Security "Secretary"] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [Secretary], that the following conditions have been fulfilled:

(1) At least one parent . . . is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent--

(A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

(B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

The record contains no evidence to establish that the applicant resides outside of the United States in the physical custody of his U.S. citizen mother. Moreover, the applicant has failed to establish that he was temporarily admitted into the United States.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met his burden, and the appeal will be dismissed.

ORDER: The appeal is dismissed.